

MILITARY COMMISSIONS UPDATE - NOVEMBER 2, 2004

U.S. NAVAL BASE GUANTANAMO BAY, CUBA – The military commission trying the case of *U.S. v. Hicks* continued hearing arguments on pretrial motions today.

The proceedings began with the commission's announcement of rulings on certain motions heard yesterday. The commission denied defense motions to declare the commission improperly constituted and improperly selected, two motions for a continuance, and a motion to dismiss that argued charges were improperly referred. The commission also disagreed with the defense position on the manner in which certain questions are required to be submitted to the appointing authority for his determination.

Although the commission heard arguments on numerous defense motions today, no other rulings were announced. Before ruling on those motions, the panel members will further consider the respective arguments and legal sources cited by counsel and, on some motions, the proposed findings submitted by counsel.

Among the defense motions argued today were those which challenged whether the military commission may consider certain offenses and whether the government had actually stated such offenses in certain charges. Included was an argument by the defense that terrorism should be struck from the charges as an offense under the law of armed conflict. The defense also argued that any charges should be limited to conduct during the period of conflict in Afghanistan which, according to the defense, did not begin until Oct 7, 2001, when U.S. forces began bombing operations there. Maj. Michael D. Mori, one of the defense counsels, further argued, "there is no armed conflict against al Qaida."

Other defense motions related to issues of speedy trial and David Hicks' pretrial detention. The defense also argued that the President's Military Order establishing the military commissions fails to afford equal protection under the U.S. Constitution. The Defense then argued a series of motions related to the commission's jurisdiction, its composition, and the authority of the appointing authority.

The day's proceedings involved in-depth legal arguments. Occasionally, those arguments turned quite spirited. As was the case in yesterday's proceedings, each panel member—in particular, the two non-lawyer members—were fully engaged in the legal discussions. It was apparent to observers that the panel had carefully reviewed the written materials and had come prepared to ask questions. At no time were they hesitant to do so.